IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1965.

No. 597

JAMES E. MILLS,
Defendant, Appellant,

vs.

STATE OF ALABAMA,
Plaintiff, Appellee.

On Appeal from the Supreme Court of Alabama.

JURISDICTIONAL STATEMENT OF APPELLANT.

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Cases Cited.

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JURISDICTIONAL STATEMENT OF APPELLANT.

Appellant James E. Mills appeals from the judgment of the Supreme Court of Alabama entered on March 4, 1965, rehearing denied on July 15, 1965, reversing a decision of the Jefferson County Criminal Court, and submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

OPINIONS BELOW.

The opinion of the Supreme Court of Alabama is reported in 176 So. 2d 884 and is attached hereto as Appendix A. The unreported order of that Court overruling the application for rehearing is set forth in Appendix B. The judgment of the Jefferson County Criminal Court is not reported and is attached hereto as Appendix E.

JURISDICTION.

The proceeding below was instituted on November 13, 1962 by the State of Alabama in a criminal complaint, subsequently amended, charging appellant with a violation of Title 17, Section 285, Code of Alabama 1940, Corrupt Practices Act (Appendix C). Appellant demurred to the complaint on several grounds. The Jefferson County Criminal Court, on December 26, 1962, sustained said demurrers to the amended complaint solely on the basis of the demurrer challenging the constitutionality of Title 17, Section 285, Code of Alabama as being in violation of the Constitution of Alabama and the First and Fourteenth Amendments to the Constitution of the United States (Appendix I; J). The State of Alabama appealed from this order under Title 15, Section 370, Code of Alabama 1940 (Appendix F). The Supreme Court of Alabama, by a judgment entered March 4, 1965, application for rehearing overruled July 15, 1965, reversed the decision of the Jefferson County Criminal Court, holding that Title 17, Section 285, Code of Alabama 1940 was constitutional. Notice of appeal was filed in the Supreme Court of Alabama on July 26, 1965 (Appendix G). The jurisdiction over this appeal is conferred on the Supreme Court of the United States by 28 U. S. C., § 1257 (2):

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be reviewed by the Supreme Court as follows:

"(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

The following decisions sustain the jurisdiction of this Court to review the judgment of the Supreme Court of Alabama on appeal:

Richfield Oil Corp. v. State Board of Equalization, 329 U. S. 69 (1946), 67 S. Ct. 156;

Pope v. Atlantic Coast Line R. Co., 345 U. S. 379 (1953), 73 S. Ct. 749;

Brown Shoe Co. v. United States, 370 U. S. 294 (1962);

Brady v. State of Maryland, 373 U. S. 83 (1963), 82 S. Ct. 1502;

Local No. 438, Construction & General Labor Union v. S. J. Curry, 371 U. S. 542 (1963), 83 S. Ct. 531;

NAACP v. Button, 371 U. S. 415 (1963), 83 S. Ct. 523;

Baggett v. Bullitt, 377 U. S. 360 (1964), 84 S. Ct. 1316;

Hudson Distributors v. Upjohn Co., 377 U. S. 386 (1964), 84A S. Ct. 1273;

Dombrowski v. Pfister, 380 U. S. 479 (1965), 85 S. Ct. 209;

Freedman v. Maryland, 381 U. S. 51 (1965), 85 S. Ct. 734;

Harman v. Forssenius, 380 U. S. 528 (1965), 85 S. Ct. 117.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

United States Constitution, Amendment I (Appendix I);

United States Constitution, Amendment XIV, Section 1 (Appendix J);

Title 17, Section 285, Code of Alabama 1940 (Appendix C);

Title 17, Section 332, Code of Alabama 1940 (Appendix D).

QUESTIONS PRESENTED.

1. Whether Title 17, Section 285, Code of Alabama 1940, which prohibits as a "corrupt practice", "electioneering" or the solicitation of votes on election day and which has been construed by the Supreme Court of Alabama to apply to a newspaper editor who writes and causes to be published in a newspaper of general circulation on election day editorial comment on the issues of said election, violates the First and Fourteenth Amendments to the United States Constitution as an infringement upon the freedom of expression guaranteed by said Amendments.

2. Whether Title 17, Section 285, Code of Alabama 1940, violates the First and Fourteenth Amendments to the Federal Constitution because the language in said section setting forth acts prohibited thereby is so vague and indefinite as to deprive of due process of law a newspaper editor who writes and causes to be published in a newspaper of general circulation on election day editorial comment on the issues of said election.

STATEMENT OF THE CASE.

Appellant James E. Mills is the editor of the Birmingham Post-Herald, a daily newspaper published in Birmingham, Alabama, and delivered to subscribers throughout this state. On November 6, 1962, a municipal election was held in the City of Birmingham to determine whether the existing commission form of city government should be retained or whether it should be replaced by the mayor-council form of government. It is conceded by appellant that on the eve of election day he wrote an

editorial for the paper's election day edition in which he stated that the Mayor of Birmingham had proposed to raise city employees' salaries and had announced that he (the Mayor) would instruct public employees not to discuss news regarding the public business with newspaper reporters (Appendix H). That the Mayor did make such statements is unchallenged. In addition, appellant editorially criticized the Mayor for the above statements, declaring that

> "It was another good reason why the voters should vote overwhelmingly today in favor of Mayor-Council government.
>
> • • • • • • •
>
> "Birmingham and the people of Birmingham deserve a better break. A vote for Mayor-Council government will give it to them" (Appendix H).

The State of Alabama has enacted a Corrupt Practices Act. Title 17, Sections 268-286, Code of Alabama 1940. Section 285 (Appendix C), declares it to be a

> "corrupt practice for any person on any election day . . . to do any electioneering or to solicit any votes . . . in support of or in opposition to any proposition that is being voted on the day on which the election effecting such . . . propositions is being held."

The commission of a corrupt practice is a criminal offense. Title 17, Section 332, Code of Alabama, 1940 (Appendix D).

On the basis of the editorial described above a criminal complaint was issued on November 13, 1962 from the Jefferson County Criminal Court charging appellant with a violation of Section 285. Said complaint having been subsequently amended, appellant filed demurrers to the amended complaint raising among other issues the applicability of Section 285 to newspaper editorials and the

constitutionality of Section 285. Appellant maintained that both by reason of its vagueness and because of its restrictions upon freedom of expression if construed to apply to appellant, Section 285 was repugnant to the First and Fourteenth Amendments to the Constitution of the United States.

The Jefferson County Criminal Court, on December 26, 1962, sustained said demurrers, basing its decision "solely on the grounds of demurrer challenging the constitutionality of Title 17, Section 285, Code of Alabama 1940, as being in violation of [certain provisions of the Alabama Constitution not here in issue] and the First Amendment to the Constitution of the United States and the Fourteenth Amendment to the Constitution of the United States" (Appendix E).

The State of Alabama, pursuant to Title 15, Section 370, Code of Alabama 1940 (Appendix F), appealed directly to the Supreme Court of Alabama.

The Supreme Court of Alabama on March 5, 1965 reversed the decision of the Jefferson County Criminal Court of Alabama (Appendix A), holding that Section 285 was not repugnant to the First or Fourteenth Amendments to the Federal Constitution as being vague and indefinite or infringing freedom of expression, and further that Section 285 was applicable to the editorial written and published by appellant. An application for rehearing was denied on July 15, 1965 (Appendix B).

THE QUESTIONS PRESENTED ARE SUBSTANTIAL.

The Nature of the Rulings Below Gives This Court Jurisdiction Over This Appeal.

Although this case arises from a decision of the Supreme Court of Alabama reversing the decision of the trial court which sustained demurrers based on federal

constitutional issues, such decision is final for the purposes of 28 U. S. C., § 1257, since appellant has no additional defenses to raise below either in fact or in law. In **Pope v. Atlantic Coast Line R. Co.**, 345 U. S. 379, 382 (1953), 73 S. Ct. 379, this Court, in holding that it had jurisdiction under 28 U. S. C., § 1257, to review on petition for certiorari a decision of the Supreme Court of Georgia which reversed a trial court's decision sustaining a demurrer to a petition to restrain the prosecution of an action under the Federal Employees Liability Act, stated:

> "The finality problem arises in this case because the judgment of the Georgia Supreme Court did not, on its face, end the litigation. Both parties agree that Georgia procedure would permit petitioner to return to the Superior Court of Ben Hill County and interpose some other defense to respondent's suit for an injunction. But petitioner has no other defense to interpose. He has been both explicit and free with his concession that his case rests upon his federal claim and nothing more. If the court below decided that claim correctly then nothing remains to be done but the mechanical entry of judgment by the trial court. Thus, as the case comes to us, the federal question is the controlling question; 'there is nothing more to be decided.' Under these particular circumstances, we have jurisdiction over the cause, **Richfield Oil Corp. v. State Board of Equalization**, 329 U. S. 69, 91 L. ed. 80, 67 S. Ct. 156 (1946); . . ."

The **Atlantic Coast Line** decision was cited with approval on this point in **Chicago v. Atchison, Topeka & Santa Fe RR. Co.**, 357 U. S. 77, 83 (1955), 78 S. Ct. 1063, holding that the constitutionality of a statute may be determined before any criminal proceeding is brought, and **Construction Laborers v. Curry**, 371 U. S. 542, 551 (1963), 83 S. Ct. 531. (Judgment of the Georgia Supreme Court

was "final" under 28 U. S. C., § 1257, when "nothing more of substance" was to be decided in the trial court.)

Appellant readily concedes the fact that he wrote the editorial complained of and caused it to be published on election day. The Supreme Court of Alabama has effectively foreclosed all defenses in law by specifically holding that Section 285 of the Alabama Corrupt Practices Act prohibits such conduct. Thus the federal constitutional questions raised on this appeal are controlling since "there is nothing more to be decided."

Particularly in the area of rights protected by the First Amendment, it is desirable that the constitutional issues be promptly resolved so that delay inherent in defending further criminal prosecution below will not impair the freedom of expression guaranteed not only to appellant but to others wishing to assert their rights. See **Dombrowski v. Pfister**, 380 U. S. 479, 486-87 (1965), 85 S. Ct. 116; **Baggett v. Bullitt**, 377 U. S. 360, 378-79 (1964), 84 S. Ct. 1316. The appellant in this case has already waited nearly three years for a determination of his constitutional rights.

Section 285 of the Alabama Corrupt Practices Act Clearly Infringes on the Freedom of Expression Protected by the First and Fourteenth Amendments.

The issues raised on this appeal are substantial. Not only is appellant's right to editorialize on questions or candidates involved in the election denied by the decision below, but that of all modes of public information. The constitutional right of news media to comment freely on election issues on election day is of utmost importance, both to such media and to the public. If the holding of the Supreme Court of Alabama is permitted to stand, any form of discussion of political and civic issues will be effectively muzzled on election day, at a time when public

interest is at its keenest. Such a result is totally incompatible with the right of free expression guaranteed under the Constitution.

Section 285 of the Alabama Corrupt Practices Act, as construed and applied by the highest court of that state, clearly infringes upon appellant's constitutionally guaranteed right of freedom of expression. Criticism of public officials is constitutionally protected from state criminal prosecution, even if untrue, unless made with knowledge of its falsity or in reckless disregard of whether it is true or false. **Garrison v. Louisiana**, 379 U. S. 64 (1964), 85 S. Ct. 209. Section 285, as construed below, would appear to prohibit any criticism on election day of any person standing for election, regardless of truth or good motive. The fact that such criticism is made on election day should enhance, rather than diminish its constitutionally protected status. It is essential that at such a time all persons have the right to comment freely and explicitly on the issues or the candidates involved in the election. Cf. **Thomas v. Collins**, 323 U. S. 516, 532-37 (1945), 65 S. Ct. 315. The "clear and present danger" test governs this case:

> "That is why freedom of speech, though not absolute, **Chaplinsky v. New Hampshire**, *supra*, pp. 571-572, is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest. See **Bridges v. California**, 314 U. S. 252, 262; **Craig v. Harney**, 331 U. S. 367, 373. There is no room under our Constitution for a more restrictive view." **Terminiello v. Chicago**, 337 U. S. 1, 4 (1949).

Section 285 of the Alabama Corrupt Practices Act Is Unconstitutional Because Vague and Indefinite.

The balancing of state power to regulate elections and corrupt practices against the right of freedom of expression is a substantial one calling for consideration by this Court. Appellant does not challenge the right of a state to regulate elections by statutes clearly, specifically and narrowly drawn to meet substantive evils which threaten the integrity of the electoral process. On the other hand, the Constitution manifestly invalidates statutes drafted in such a loose and broad fashion as to stifle public debate on election issues. Section 285 falls in the latter category. The rights of media of public information, and of the general public as well, require protection against excessively broad penal statutes of this type.

Numerous decisions of this Court have invalidated state statutes on account of vagueness in that they do not adequately inform persons subject to them what conduct is prohibited. See, e. g., **Winters v. New York**, 333 U. S. 507 (1948), 68 S. Ct. 665; **Herndon v. Lowry**, 301 U. S. 242 (1937); **Stromberg v. California**, 283 U. S. 359 (1930); and **Lanzetta v. New Jersey**, 306 U. S. 451 (1939), 59 S. Ct. 618. Section 285 on its face is patently vague and indefinite. The instant case is the only Alabama decision construing said section, and the opinion of the Supreme Court of Alabama in no way limits its scope. Does the statute prohibit a husband advising his wife on voting? Cf. **Griswold v. Connecticut**, 381 U. S. 479 (1965), 85 S. Ct. 1678. Does it prohibit billboard advertising concerning election issues visible to the public on election day even though erected prior to election day? Does it prohibit the sale on election day of books and magazines in which election issues are discussed even though first offered for sale on newsstands prior to election day? Does it prohibit a newspaper from urging persons to go to the

polls on election day after previously advising votes for or against specific issues or candidates? Does it prohibit discussions of election issues on election day even after the polls have been closed? Does it apply to federal as well as state elections? The statute on its face could be applied to any of the above situations as well as many other innocent acts. Specific intent to influence an election may not be necessary.

Such sweeping coverage renders the statute unconstitutional both as depriving persons of due process of law because the offenses proscribed are not clearly set forth and because it constitutes an undue burden on the right of free expression. Thus, even if a properly drawn statute regulating certain forms of electioneering or soliciting votes on election day might be sustained, Section 285 as construed by the Supreme Court of Alabama does not meet the requisite standards of clarity and limited scope.

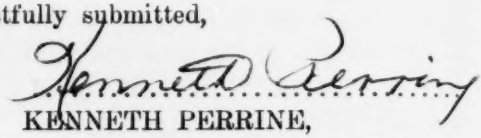
The application of this standard here can produce only one result, that appellant's right to speak out on election day may not be impaired by a criminal statute. **Garrison v. Louisiana,** 379 U. S. 64 at 70. See also **United States v. Congress of Industrial Organizations,** 335 U. S. 106, 121-123 (1948), 68 S. Ct. 1349. In the **Bridges** case, 314 U. S. 252 (1941), relied on in **Terminiello,** even pending judicial proceedings, which are not a subject of public decision, were held not immune from criticism. *A fortiori,* discussion of political issues ought not to be suppressed on the day of their resolution.

CONCLUSION.

The decision of the Supreme Court of Alabama construing Section 285 of the Alabama Corrupt Practices Act to apply to the editorial written and published by appellant and holding said section as construed to be constitutional is clearly erroneous. The questions presented

by this appeal are substantial and are of public importance since they involve the right of free expression on public issues.

Respectfully submitted,



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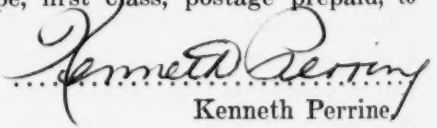
Proof of Service.

I, Kenneth Perrine, attorney for James E. Mills, Appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 9th day of September, 1965, I served copies of the foregoing Jurisdictional Statement upon the State of Alabama, by serving a copy of the same on Earl C. Morgan, Solicitor of the Tenth Judicial Circuit of Alabama, Jefferson County Courthouse, Birmingham, Alabama, attorney for the State of Alabama, and upon the Hon. Richmond Flowers, Attorney General of the State of Alabama, Montgomery, Alabama, by mailing a copy in a duly addressed envelope, first class, postage prepaid, to said parties.



Kenneth Perrine

APPENDIX A.

The State of Alabama—Judicial Department

Supreme Court of Alabama

October Term 1964-65

6 Div. 950

State of Alabama

v.

James E. Mills

Appeal from Jefferson County Criminal Court

Livingston, Chief Justice.

This is an appeal by the State of Alabama, under and by virtue of the provisions of Sec. 370, Title 15, Code of Alabama 1940, from a judgment of the Jefferson County Criminal Court sustaining a demurrer to an amended criminal complaint on the grounds that the statute on which the said criminal complaint was based, Sec. 285, Title 17, Code of 1940, is unconstitutional.

The Birmingham Post-Herald is a daily newspaper of general circulation, published in the City of Birmingham, Alabama. James E. Mills, the appellee, is the editor of that newspaper.

On November 6, 1962, an election was held in the City of Birmingham, Alabama, to determine whether or not the City of Birmingham was to retain the then existing commission form of city government or to replace it by another form.

In the November 6, 1962, issue of the Birmingham Post-Herald, which was distributed to purchasers of and subscribers to that newspaper, was an editorial which was authored by Mr. Mills, in words and figures as follows:

"Do We Need Further Warning?

"Mayor Hanes' proposal to buy the votes of city employees with a promise of pay raises which would cost the taxpayers nearly a million dollars a year was enough to destroy any confidence the public might have had left in him.

"It was another good reason why the voters should vote overwhelmingly today in favor of Mayor-Council government.

"Now, Mr. Hanes, in his arrogance, proposes to set himself up as news censor at City Hall and 'win or lose' today he says he will instruct all city employees under him to neither give out news regarding the public business with which they are entrusted nor to discuss it with reporters either from the Post-Herald or the News.

"In other words, it is Mr. Hanes' plan to give to the people of Birmingham only the news he wants them to have and only in the light in which he sees fit to present it.

"The mayor makes a mistake, however, if he thinks he can black out news from City Hall. He is mistaken, too, if he thinks the citizens of Birmingham will let him get away with so brazen an attempt to deny them ready access to what they have a right to know about all that goes on at City Hall.

"Do the people of Birmingham need a more serious warning?

"If Mayor Hanes displays such arrogant disregard of the public's right to know on the eve of the election what can we expect in the future if the City Commission should be retained?

"Let's take no chances.

"Birmingham and the people of Birmingham deserve a better break. A vote for Mayor-Council government will give it to them."

Section 285 of Title 17, Code of 1940, reads as follows:

> "Corrupt practices at elections enumerated and defined.—It is a corrupt practice for any person on any election day to intimidate or attempt to intimidate an elector or any of the election officers; or, obstruct or hinder or attempt to obstruct or hinder, or prevent or attempt to prevent the forming of the lines of the voters awaiting their opportunity or time to enter the election booths; or to hire or to let for hire any automobile or other conveyance for the purpose of conveying electors to and from the polls; or, to do any electioneering or to solicit any votes or to promise to cast any votes for or against the election or nomination of any candidate, or in support of or in opposition to any proposition that is being voted on on the day on which the election affecting such candidates or propositions is being held."

Based on the foregoing editorial, a citizen swore to a criminal complaint charging Mills with violation of Sec. 285 of Title 17, supra.

The criminal complaint as amended charged that the publication and distribution of the editorial constituted "electioneering" or "soliciting votes in support of a proposition which was being voted on on the day that the election affecting such proposition was being held."

A demurrer to the amended complaint was filed by the defendant Mills, appellee. Each ground of the demurrer challenged the constitutionality of said Sec. 285 of Title 17, supra. The demurrer to the complaint as amended was sustained, the judgment specifying that the statute was unconstitutional as violative of (1) Article 1, Sec. 4 of the Constitution of Alabama 1901, (2) Article 1, Sec. 6 of the Constitution of Alabama 1901, (3) the First Amend-

ment to the Constitution of the United States, and (4) The Fourteenth Amendment to the Constitution of the United States.

These constitutional provisions read as follows:

Article 1, Secs. 4 and 6, Constitution of Alabama 1901:

> "Section 4. That no law shall ever be passed to curtail or restrain the liberty of speech or of the press; and any person may speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that liberty.
>
> "Section 6. That in all criminal prosecutions, the accused has a right to be heard by himself and counsel * * * and he shall not be compelled to give evidence against himself, nor be deprived of life, liberty, or property, except by due process of law; * * *."

The First Amendment, Constitution of the United States of America, reads, in pertinent part, as follows:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, * * *."

The Fourteenth Amendment, Constitution of the United States of America, reads, in pertinent part, as follows:

> "* * * No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law * * *."

The state appealed.

The principles by which courts are guided when it is sought to strike down an act of the legislature as violative

of the Constitution are clearly and concisely stated in **Alabama State Federation of Labor v. McAdory,** 246 Ala. 1, 18 So. 2d 810, where the late Chief Justice Gardner said:

> "At the outset reference may be made, as is often done, to the principles by which courts are guided when it is sought to strike down as violative of the constitution a legislative act. Uniformly, the courts recognize that this power is a delicate one, and to be used with great caution. It should be borne in mind, also, that legislative power is not derived either from the state or federal constitutions. These instruments are only limitations upon the power. Apart from limitations imposed by these fundamental charters of government, the power of the legislature has no bounds and is as plenary as that of the British Parliament. It follows that, in passing upon the constitutionality of a legislative act, the courts uniformly approach the question with every presumption and intendment in favor of its validity, and seek to sustain rather than strike down the enactment of a coordinate branch of the government. All these principles are embraced in the simple statement that it is the recognized duty of the court to sustain the act unless it is clear beyond reasonable doubt that it is violative of the fundamental law. State ex rel. Wilkinson v. Murphy, 237 Ala. 332, 186 So. 487, 121 A. L. R. 283.
>
> "Another principle which is recognized with practical unanimity, and leading to the same end, is that the courts do not hold statutes invalid because they think there are elements therein which are violative of natural justice or in conflict with the court's notions of natural, social, or political rights of the citizen, not guaranteed by the constitution itself. Nor even if the courts think the act is harsh or in some degree unfair, and presents chances for abuse,

or is of doubtful propriety, all of these questions of propriety, wisdom, necessity, utility, and expediency are held exclusively for the legislative bodies, and are matters with which the courts have no concern. This principle is embraced within the simple statement that the only question for the court to decide is one of power, not of expediency or wisdom. 11 Am. Jur., pp. 799-812; A. F. of L. v. Reilly, District Court of Colorado, 7 Labor Cases No. 61,761.

"The broad doctrine as thus announced is sustained by the weight of authority, both in the Federal and the state courts. For our own State the cases of City of Ensley v. Simpson, 166 Ala. 366, 52 So. 61, and State v. Ala. Fuel & Iron Co., 188 Ala. 487, 66 So. 169 L. R. A. 1915A, 185 Ann. Cas. 1916E, 752, furnish apt illustrations. And as for the Federal courts, reference may be made to Flint v. Stone Tracy Co., 220 U. S. 107, 31 S. Ct. 342, 55 L. Ed. 389, Ann. Cas. 1912B, 1312."

Our cases are legion to the effect that all presumptions and intendments should be indulged in favor of the validity of a statute, and its unconstitutionality should appear beyond a reasonable doubt before it will be held invalid. Statutes must be construed, if fairly possible, so as to avoid not only a conclusion that it is unconstitutional, but also grave doubts on that score. Nat'l Reporter System, Constitutional Law, Key No. 48; Vol. 4, Alabama Digest, Constitutional Law, Key No. 48, pp. 710-714; **Constantine v. U. S.**, 75 Fed. 2d 928, 55 S. Ct. 922, 295 U. S. 730, 79 L. Ed 1679, 56 S. Ct. 223; **State v. Skeggs**, 154 Ala. 249, 46 So. 268; **Anniston Mfg. Co. v. Davis**, 57 S. Ct. 816, 81 L. Ed. 1143, 89 F. 2d 1012, 58 S. Ct. 3, 82 L. Ed. 599; **Stone v. State**, 233 Ala. 239, 171 So. Rep. 362.

The legislature may enact laws reasonably regulating elections, and the state may under its "police power"

enact laws which interfere indirectly and to a limited extent with freedom of speech or the press, if reasonably necessary for protection of the general public. 16 C. J. S., p. 1157, Par. 213 (23); **Alabama State Federation of Labor v. McAdory**, supra; Nat'l Reporter Systems, Elections, Key Nos. 228 and 231; **La Follette v. Kohler**, 69 A. L. R. 376; **Ex parte Hawthorne** (Fla.), 156 So. 619 (623), 96 A. L. R. 572; **Branton v. State**, 218 S. W. 2d 690, 214 Ark. 861, 94 L. Ed. 538, 70 S. Ct. 155, 338 U. S. 878; 18 Am. Jur., p. 336, par. 235, "Elections"; **Barton v. City of Bessemer**, 234 Ala. 20, 173 So. 626; **In re Mack**, 126 Atl. 2d 679 (681), 386 Pa. 251.

Freedom of speech or freedom of the press is susceptible to only such restrictions as are necessary to prevent grave and immediate danger to interests which the state may lawfully protect. **West Virginia State Board of Education v. Barnette**, 319 U. S. 624, 63 S. Ct. 1178, 1186.

A full exercise of the right of citizenship includes, not only the right to vote, by those possessing the prescribed qualifications, but the right to assemble, the right of free speech, the right to present one's views to one's own fellow citizens, but **these rights are subject to restraint by reasonable regulation.**

In numerous cases in this court, it has been made as plain as it is possible to make it that the regulation of these rights is subject to constitutional limitations, and, if unreasonable, must be declared void. Laws of this kind lie within the police power field and are subject to the same constitutional limitations as are laws dealing with the right to life, liberty and property. The right of the legislature to exercise the police power is not referable to any single provision of the Constitution. It inheres in and springs from the nature of our institutions, and so the limitations upon it are those which spring from the same source as well as those expressly set out in the Constitu-

tion. But legislative action is always subject to the test of **reasonableness.** A review of all the cases in which courts have considered the reasonableness of laws enacted by legislatures in the exercise of the police power would leave us about where be began.

A clear distinction must be drawn between cases passing upon the reasonableness of an act of the legislature and cases having to do with the reasonableness of municipal ordinances, the reasonableness of classifications, etc. The fundamental principles governing the exercise of the police power by the legislature have been considered many times by this court. A court may not declare a law void for unreasonableness because it is unwise or prescribes a limitation more restrictive than the court thinks proper. If a law is germane to the subject with which it deals, that is, is not passed for the purpose of securing some ulterior objective, and is in fact within the field of regulation, if it tends to conserve rather than destroy, it is beyond the scope of judicial interference.

There is no yardstick by which reasonableness may be measured with mathematical certainty. This court holds in accordance with the great weight of authority that a law cannot be held to be invalid because unreasonable, unless and until it appears beyond reasonable controversy that it unnecessarily impairs to the point of practical destruction a right safeguarded by the Constitution. As has already been pointed out, the law under consideration lies within the police power field and impairs only the right of free speech, which includes the right to write and publish one's views.

Does a law which prohibits "soliciting votes" or "electioneering" on election day so unreasonably invade the constitutional right of free speech or free press as to be void? In order to entitle the court to declare the law void on that ground it is not sufficient that the restric-

tion is greater or less than the court might think wise. It is not sufficient that it may appear to the court that it may operate as a restraint upon the information and education of the electorate. Before the act can be set aside, it must appear beyond reasonable controversy to the court that the law in question tends to destroy rather than conserve and is not germane to the purpose sought to be achieved.

Out of the facts the law arises, and we come now to the application of the foregoing principles to the facts of the case at hand.

The statute declares it a corrupt practice for any person on any election day to do "any electioneering or to solicit any votes * * * in support of or in opposition to any proposition that is being voted on on the day on which the election affecting such candidates or propositions is being held."

There can be no sort of doubt that the editorial distributed on the election date violates the Corrupt Practice Act of soliciting votes or electioneering on election day. The editorial for which appellee was responsible stated:

> "It was another good reason why the voters should **vote overwhelmingly today** in favor of Mayor-Council government," and further
>
> "Let's take no chances. Birmingham and the people of Birmingham deserve a better break. A **Vote** for Mayor-Council government will give it to them." (Emphasis supplied.)

The real question in the case is: Did the Alabama Legislature exercise reasonable use of police power, in an effort to maintain orderly elections, in limiting full free speech and freedom of the press, by denying to all persons the right to solicit votes, or electioneer, while the electorate recorded their wishes at the polling booths on election day?

We are of the opinion that it did. In deciding whether any police regulation is reasonable, the courts must look at all the surrounding circumstances. If the legislature thought such regulations are necessary and reasonable, the courts have not stricken same as violative of constitutional rights, because the courts thought of better means, in their judgment, of handling the danger. Generally speaking, courts have stricken such legislative acts only if they have the effect, under all the circumstances, of practically destroying the constitutional rights.

The pertinent statute being within the field in which the legislature may properly and constitutionally exercise the police power, the act does not so clearly appear to be an unwarrantable interference with the guaranteed constitutional right that it is within the power of the court to declare it void; on the contrary, the restriction, everything considered, is within the field of reasonableness.

Appellee cites the case of **Barton v. City of Bessemer**, 234 Ala. 20, 173 So. 626. But as we read that case, it supports the principles we have applied in this case. We quote the following from it:

> "It is a fundamental principle, long established, that the freedom of speech and of the press which is secured by the Constitution, does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom.
>
> "Reasonably limited, it was said by Story in the passage cited, this freedom is an inestimable privilege in a free government; without such limitation, it might become the scourge of the republic."

It is undeniable that it is reasonably necessary that all elections be conducted in an orderly fashion. It is a salu-

tary legislative enactment that protects the public from confusive last-minute charges and countercharges and the distribution of propaganda in an effort to influence voters on an election day; when as a practical matter, because of lack of time, such matters cannot be answered or their truth determined until after the election is over.

Appellee argues that Sec. 285, Title 17, Code, should be declared void and unconstitutional for uncertainty. We cannot agree. The cases cited in support of the argument are readily distinguishable from the instant case. The provisions of the Corrupt Practice Act, as applied to the facts of this case, are clear, unambiguous and not an unreasonable limitation upon free speech, which includes free press.

Reversed and Remanded.

Simpson, Merrill and Harwood, JJ., concur.

APPENDIX B.

Thursday, July 15, 1965

The Supreme Court of Alabama Thursday, July 15, 1965

The Court Met in Special Session Pursuant to Adjournment.

Present: All the Justices

6 Div. 950

State of Alabama

vs.

James E. Mills

Jefferson County Criminal Court

It Is Ordered that the application for rehearing filed on March 18, 1965, be and the same is hereby overruled.

APPENDIX C.

Title 17, Section 285, Code of Alabama 1940:

"§ 285 (599) Corrupt Practices at Elections Enumerated and Defined.—It is a corrupt practice for any person on any election day to intimidate or attempt to intimidate an elector or any of the election officers; or, obstruct or hinder or attempt to obstruct or hinder, or prevent or attempt to prevent the forming of the lines of the voters awaiting their opportunity or time to enter the election booths; or to hire or to let for hire any automobile or other conveyance for the purpose of conveying electors to and from the polls; or, to do any electioneering or to solicit any votes or to promise to cast any votes for or against the election or nomination of any candidate, or in support of or in opposition to any proposition that is being voted on on the day on which the election affecting such candidates or propositions is being held" (Acts of Alabama 1915, p. 250).

APPENDIX D.

Title 17, § 332, Code of Alabama 1940:

"§ 332 (3937) Corrupt Practice in Election or Primary Election.—Any person or persons who do any act defined or declared to be a corrupt practice under the election or primary election laws of this state, or who wilfully fails or refuses to do any act required of such person under this chapter, relating to the corrupt practice law of this state, shall be guilty of a misdemeanor, and, on conviction, must be fined not more than five hundred dollars, and may also be imprisoned in the county jail or sentenced to hard labor for the county for not more than six months at the discretion of the court trying the case (1915, p. 250)."

APPENDIX E.

Judgment Entry.

State of Alabama,
vs.
James E. Mills.

Appeal from Jefferson County Criminal Court.

Honorable Francis Thompson, Judge Presiding.

This the 26th day of December 1962, came Emmett Perry, Solicitor of the Tenth Judicial Circuit of Alabama, who prosecutes for the State of Alabama, and also came the defendant in his own proper person and by attorney, and the State of Alabama having filed on November 28, 1962, an amendment to the original complaint in this cause and the defendant on said date having filed a motion to dismiss and quash said complaint as last amended, it is ordered and adjudged by the court that the said motion to dismiss and quash is hereby overruled; and the defendant having also filed on November 28, 1962, demurrer to the complaint as last amended and said demurrer being considered by the Court it is ordered and adjudged by the Court that said demurrer is sustained. This action of the court is based solely on the grounds of demurrer challenging the constitutionality of Title 17, Section 285, Code of Alabama 1940, as being in violation of Article I, Section 4, and Section 6, of the constitution of Alabama and the First Amendment to the Constitution of the United States and the Fourteenth Amendment to the Constitution of the United States. The State of Alabama gives notice of appeal under Code of Alabama of 1940, Title 15, Section 370, and defendant held under present bond pending decision of Supreme Court of Alabama.

December 26, 1962.

Thompson, Judge.

APPENDIX F.

Title 15, Section 370, Code of Alabama 1940:

"§ 370 (3239) (6246) (4315) (4515) Appeal by State When Statute Declared Unconstitutional.—In all criminal cases when the act of the legislature under which the indictment or information is preferred is held to be unconstitutional, the solicitor may take an appeal in behalf of the state to the supreme Court, which appeal shall be certified as other appeals in criminal cases; and the clerk must transmit without delay a transcript of the record and certificate of appeal to the Supreme court."

APPENDIX G.

In the Supreme Court of the State of Alabama.

State of Alabama,

Appellant,

vs.

James E. Mills,

Appellee.

6 Div. No. 950.

Notice of Appeal to the Supreme Court of the United States.

Filed Jul. 26, 1965, Supreme Court of Alabama,

Richard W. Neal, Deputy Clerk.

I.

Notice is hereby given that James E. Mills, Appellee above named, hereby appeals to the Supreme Court of the United States from the final order of the Supreme Court of the State of Alabama, entered on the 15th day of July, 1965, overruling the application for rehearing of the decision of the Supreme Court of the State of Alabama entered on March 4, 1965, reversing the judgment of the Jefferson County Criminal Court entered on the 26th day of December, 1962.

This appeal is taken pursuant to 28 U. S. C. A. 1257.

Appellee was charged with violation of Section 285, Title 17, Code of Alabama, 1940, Corrupt Practices Act. The Jefferson County Criminal Court sustained demurrers to the complaint, as amended, on the grounds that Section 285, Title 17, Code of Alabama, 1940, was violative of Article I, Section 4 and Section 6 of the Constitution of the State of Alabama, and of the First and Fourteenth Amendments to the Constitution of the United States. The Supreme Court of Alabama, in its opinion issued

March 4, 1965, reversed the decision of the lower court on the grounds that Section 285, Title 17, Code of Alabama, 1940, was not violative of Article I, Section 4 and Section 6 of the Constitution of the State of Alabama of 1901, nor of the First and Fourteenth Amendments to the Constitution of the United States.

II.

The Clerk will prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, including in said transcript:

1. The transcript of the record of appeal from the Jefferson County Criminal Court to the Supreme Court of Alabama.

   (a) The original complaint and warrant of arrest filed in the Jefferson County Criminal Court on November 13, 1962.

   (b) Amendment to complaint filed November 28, 1962.

   (c) Defendant James E. Mills' motion to dismiss and quash the complaint as amended, filed November 28, 1962.

   (d) Demurrers of defendant to the complaint as amended, filed November 28, 1962.

   (e) The judgment entry in the Jefferson County Criminal Court, dated December 26, 1962.

2. Opinion of the Supreme Court of Alabama, dated March 4, 1965.

3. Application for rehearing, filed March 18, 1965.

4. Recall of the mandate and certificate by the Supreme Court of Alabama.

5. Order of the Supreme Court of Alabama denying application for rehearing, dated July 15, 1965.

6. Order of the Supreme Court of Alabama recalling the certificate remanding said case to the Jefferson County Criminal Court, dated the 21st day of July, 1965.

7. This notice of appeal.

III.

The following questions are presented by this appeal:

1. Is Section 285, of Title 17, Code of Alabama, 1940, unconstitutional, being violative of the First and Fourteenth Amendments to the United States Constitution?

2. Is Section 285, of Title 17, Code of Alabama, 1940, unconstitutional and void, being violative of due process of law as guaranteed under the Fourteenth Amendment to the United States Constitution?

3. Is Section 285, of Title 17, Code of Alabama, 1940, unconstitutional, unduly restraining the freedom of speech and press in violation of the First Amendment to the United States Constitution?

4. Is Section 285, of Title 17, Code of Alabama, 1940, as applied in this case, repugnant to the guarantee of liberty and freedom of speech and press contained in the First and Fourteenth Amendments to the United States Constitution, and Article I, Section 4 and Section 6, Declaration of Rights of the Constitution of the State of Alabama of 1901?

Kenneth Perrine,
Kenneth Perrine, Attorney for
James E. Mills, Appellee.

Leader, Tenenbaum, Perrine & Swedlaw,
933 Bank for Savings Building,
Birmingham, Alabama 35203,
Of Counsel.

Proof of Service.

I, Kenneth Perrine, attorney of record for James E. Mills, Appellee herein, depose and say that I served a copy of the foregoing notice of appeal to the Supreme Court of the United States on Earl C. Morgan, Solicitor of the Tenth Judicial Circuit of Alabama, Jefferson County Courthouse, Birmingham, Alabama, Attorney for the Appellant, State of Alabama, by mailing a copy thereof to him at the above address, postage prepaid, and that I served a copy of the same upon Richmond Flowers, Attorney General of the Appellant State of Alabama, by mailing the same, postage prepaid, to the Office of the Attorney General, State of Alabama, Montgomery, Alabama.

This the 23 day of July, 1965.

Kenneth Perrine,
Kenneth Perrine.

Subscribed and sworn to before me, this the 23 day of July, 1965.

Lucille Rayfield,
Notary Public.

State of Alabama,
City and County of Montgomery.

Re: 6 Div. 950.

State of Alabama,
Appellant,

vs.

James E. Mills,
Appellee.

I, Richard W. Neal, as Deputy Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages contain a full, true and correct copy of the Notice of Appeal to the Supreme Court of the United States filed

by the Appellee, James E. Mills, on July 26, 1965, in the above styled cause, as the same appears and remains of record and on file in this office.

Witness my hand and the seal of the Court attached this 10th day of August, 1965.

Richard W. Neal,
Deputy Clerk of the Supreme
Court of Alabama.

(Seal)

APPENDIX H.

"Do We Need Further Warning?

"Mayor Hanes' proposal to buy the votes of city employees with a promise of pay raises which would cost the taxpayers nearly a million dollars a year was enough to destroy any confidence the public might have had left in him.

"It was another good reason why the voters should vote overwhelmingly today in favor of Mayor-Council government.

"Now Mr. Hanes, in his arrogance, proposes to set himself up as news censor at City Hall and 'win or lose' today he says he will instruct all city employees under him to neither give out news regarding the public business with which they are entrusted nor to discuss it with reporters either from the Post-Herald or the News.

"In other words, it is Mr. Hanes' plan to give to the people of Birmingham only the news he wants them to have and only in the light in which he sees fit to present it.

"The mayor makes a mistake, however, if he thinks he can black out news from City Hall. He is mistaken, too, if he thinks the citizens of Birmingham will let him get away with so brazen an attempt to deny them ready access to what they have a right to know about all that goes on at City Hall.

"Do the people of Birmingham need a more serious warning?

"If Mayor Hanes displays such arrogant disregard of the public's right to know on the eve of the election what can we expect in the future if the City Commission should be retained?

"Let's take no chances.

"Birmingham and the people of Birmingham deserve a better break. A vote for Mayor-Council government will give it to them."

APPENDIX I.

United States Constitution, Amendment I:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

APPENDIX J.

United States Constitution, Amendment XIV, Section 1:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."